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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 BOBBY JOE MILLER,
12 Plaintiff,
13 v.
14 AMADOR COUNTY JAIL,
15 Defendant.
No. 2:21-CV-2132-KJM-DMC-P
FINDINGS AND RECOMMENDATION

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FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a pre-trial detainee proceeding pro se, brings this civil rights action
18 pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendant's motion to dismiss, ECF
19 No. 14, Plaintiff's opposition, ECF No. 18, and Defendant's reply, ECF No. 20. In its motion,
20 Defendant argues that Plaintiff fails to state a claim against it because Plaintiff does not allege
21 any policy, custom, or practice of the municipality. For the reasons discussed below, the Court
22 agrees.

In considering a motion to dismiss, the Court must accept all allegations of material fact in the complaint as true. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The Court must also construe the alleged facts in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); see also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976); Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All ambiguities or doubts must also be resolved in the plaintiff's favor. See Jenkins v. McKeithen,

1 395 U.S. 411, 421 (1969). However, legally conclusory statements, not supported by actual
 2 factual allegations, need not be accepted. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009).
 3 In addition, pro se pleadings are held to a less stringent standard than those drafted by lawyers.
 4 See Haines v. Kerner, 404 U.S. 519, 520 (1972).

5 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement
 6 of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair
 7 notice of what the . . . claim is and the grounds upon which it rests.” Bell Atl. Corp v. Twombly,
 8 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, in order
 9 to survive dismissal for failure to state a claim under Rule 12(b)(6), a complaint must contain
 10 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual
 11 allegations sufficient “to raise a right to relief above the speculative level.” Id. at 555-56. The
 12 complaint must contain “enough facts to state a claim to relief that is plausible on its face.” Id. at
 13 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the
 14 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
 15 Iqbal, 129 S. Ct. at 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but
 16 it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting
 17 Twombly, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a
 18 defendant’s liability, it ‘stops short of the line between possibility and plausibility for entitlement
 19 to relief.’” Id. (quoting Twombly, 550 U.S. at 557).

20 In deciding a Rule 12(b)(6) motion, the Court generally may not consider materials
 21 outside the complaint and pleadings. See Cooper v. Pickett, 137 F.3d 616, 622 (9th Cir. 1998);
 22 Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994). The Court may, however, consider:
 23 (1) documents whose contents are alleged in or attached to the complaint and whose authenticity
 24 no party questions, see Branch, 14 F.3d at 454; (2) documents whose authenticity is not in
 25 question, and upon which the complaint necessarily relies, but which are not attached to the
 26 complaint, see Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents
 27 and materials of which the court may take judicial notice, see Barron v. Reich, 13 F.3d 1370,
 28 1377 (9th Cir. 1994).

1 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no
2 amendment can cure the defects.” Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
3 curiam); see also Lopez v. Smith, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

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5 I. PLAINTIFF’S ALLEGATIONS

6 This action currently proceeds on Plaintiff’s original complaint. See ECF No. 1.
7 As the sole defendant, Plaintiff names the Amador County Jail. See id. at 1, 2. Plaintiff alleges
8 three claims for relief.

9 According to Plaintiff in Claim I:

10 I’ve been in this jail since 5-28-21. I haven’t seen the sun since because
11 they have a tent on the yard for inmates with COVID-19. But there has
12 NEVER been one inmate in there, even when we had a COVID-19
13 outbreak that the staff allowed to get in here by not testing inmates
14 arrested. They do [indecipherable] punishment a lot here. Here are 2
15 examples that happen. One, inmates was yelling so they took everyone’s
16 tablet that causes unneeded stress on us and the inmate that was yelling.
17 The other I filed a grievance on not being allowed caffeinated [sic]
18 beverages such as coffee and tea. Cpt. Jeremy Martin [who is not named
19 as a defendant] response was “Due to [indecipherable] actions of inmates
20 as well as consulting with medical provider, we elected not to sell coffee
21 on canteen.” Which once again is group punishment I have nothing to do
22 with all I found more positive attributes than negative. There is [sic] 2
23 officers here that do this sexual harassment (sex play comments to the
24 inmates). That is way unprofessional and the PREA act is supposed to
25 protect inmates from that. We get what we call baited into confrontation
26 by staff by there [sic] comments almost daily. I should not have to dread
27 count time or when the officers walk because my emotional stress will I
get mad this time because a [sic] officer has made a sexual comment to
myself or cellmate or will it be I get antagonized into saying something
that will be me in trouble or pushed to violence. That is cruel and unusual
punishment. The officers NOT all but I had one say there will be
retaliation if a grievance is filed.

28 Id. at 3-4.

29 In Claim II, Plaintiff alleges:

30 I’ve been to medical several times over no yard causing vitamin D
31 deficiency. The symptoms of vitamin D deficiency are: effects mood
32 drastically, anxiety, mood swings makes [sic] mental health issues worse,
33 muscle fatigue/weakness, brittle bones, bone density loss, and sin
34 paleness. When I told the medical staff I have symptoms he said they
35 don’t test for that here. Being that I’m a ward of this county jail I’m
36 allowed adequate health care not health care of some third world country.

37 Id. at 5.

1 In Claim III, Plaintiff claims:

2 Every county jail in the state of California has hair clippers for the inmates
3 to maintain basic hygiene [sic] by cutting their hair. This place fails to
4 meet the jail minimum standards. I filed a grievance on this, and this in
5 short is Cpt. Jeremy Martin's response: "It is not required to do and
6 frankly my staff does not have the time to monitor inmates to make sure
7 the clippers are not used as an instrument to cause harm." End quote. First
8 off is required for any type I and type II facility, second it is there [sic] job
9 to [indecipherable] inmates.

10 Id. at 6.

11 9 II. DISCUSSION

12 Municipalities and other local government units are among those "persons" to
13 whom § 1983 liability applies. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).
14 Counties and municipal government officials are also "persons" for purposes of § 1983. See id. at
15 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
16 government unit, however, may not be held responsible for the acts of its employees or officials
17 under a respondeat superior theory of liability. See Bd. of County Comm'r's v. Brown, 520 U.S.
18 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not of
19 the actions of its employees or officers. See id. To assert municipal liability, therefore, the
plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
custom of the municipality. See id.

20 According to Defendant:

21 Even if Plaintiff were able to allege an underlying rights violation
22 by jail staff, he fails to state a claim against Amador County, because he
23 does not allege any *Monell* allegations and the County is not vicariously
24 liable for 42 U.S.C. § 1983 claims.

25 * * *

26 Here, even if an Eighth or Fourteenth Amendment rights violation
27 was found in this case, the Complaint does not allege *any* facts that
28 support a *Monell* claim under *either* theory. There are no specific factual
allegations that the placement of a tent in the yard, denial of caffeine and
tablets, sexual comments, lack of medical treatment for Vitamin-D
deficiency symptoms, or denial of hair clippers were actions taken
pursuant to an *identified* policy or custom. Nor are there allegations that
such acts were taken by a final policymaking official or that a final

1 policymaker delegated such authority to, or previously ratified a similar
2 deprivation by a subordinate. Therefore, Plaintiff has alleged no actions by
3 Amador County for which it may be held liable, and Defendant
respectfully requests that Plaintiff's Complaint be dismissed without leave
to amend.

4 ECF No. 14, pgs. 12-13.

5 The Court agrees. Plaintiff's complaint is devoid of any allegations of a custom or
6 policy of the Amador County Jail which caused the alleged violations. For this reason,
7 Defendant's motion to dismiss should be granted and Plaintiff should be provided an opportunity
8 to amend, if he can, to allege the existence of a municipal custom or policy.

9 In amending the complaint, Plaintiff should keep in mind that conclusory
10 allegations are insufficient. See AE ex rel. Hernandez v. Cnty. Of Tulare, 666 F.3d 631, 637 (9th
11 Cir. 2012). Plaintiff must allege facts "regarding the specific nature of [the] alleged policy,
12 custom, or practice. Id. at 637; see also Hass v. Cty. of Sacramento Dep't of Support Servs., 2014
13 WL 5035949, at *1 (E.D. Cal. 2014); Gonzalez v. Cty. of Merced, 289 F. Supp. 3d 1094, 1113
14 (E.D. Cal. 2017); Cain v. City of Sacramento, 2017 WL 4410116, at *3 (E.D. Cal. 2017); Via v.
15 City of Fairfield, 833 F. Supp. 2d 1189, 1196 (E.D. Cal. 2011). To establish Monell liability,
16 Plaintiff must show: (1) an identified municipal "policy" or "custom" that caused his injury;
17 (2) show that a final policymaking official made the decision in issue; or (3) show a final
18 policymaker delegated such authority to or personally ratified a similar deprivation by a
19 subordinate. See Bd. of the County Comm'rs v. Brown, 520 U.S. 397, 403-04, 406-07 (1997).

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III. CONCLUSION

Based on the foregoing, the undersigned recommends that:

1. Defendant's motion to dismiss, ECF No. 14, be granted; and
2. Plaintiff's complaint, ECF No. 1, be dismissed with leave to amend.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: September 12, 2022


DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE